THE ELECTIONS ACT:

REVIEW AND RECOMMENDATIONS

October 1986

Pursuant to Section 10 (1.1) of
The Elections Act

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INTRODUCTION

This review of The Elections Act together with the published Statement of Votes comprise my report on the Thirty-Third General Election as required by Section 10 (1.1) of The Elections Act. The current Act has several new provisions which were amendments after the Thirty-Second General Election. These provisions, including advance voting in the Returning Office, accessibility at advance polls and swearing on at the poll, were well tested in the recent provincial election.

After each election the Act is reviewed from an administrative point of view. The discussion is based on reports from Returning Officers and on problems brought to our attention by voters and candidates during the election. As well, policy questions are often raised due to factors such as challenges in the courts and problems perceived by interest groups.

The recommendations are made with two broad goals in mind. One goal is to extend the franchise by eliminating administrative and legal barriers and by making access to the voting process easier. The second goal is to streamline election administration in order to eliminate unnecessary procedures and to save costs.

The following review discusses policy questions for consideration by the legislators, administrative changes to aid in updating procedures and economizing resources for the next election and technical items to make the Act internally consistent.

If, as a result of this review, the government introduces amendments to The Elections Act, it is important that they be introduced at the earliest opportunity. In this way, related changes to required forms and manuals can be made in time for training officials for the next general election.

Respectfully submitted,

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POLICY QUESTIONS

A. APPOINTMENT OF RETURNING OFFICERS

S.17(1) The Lieutenant Governor in Council may appoint a person who is a resident voter of an electoral division to be the returning officer of the electoral division and, unless his appointment is sooner rescinded or he dies or resigns, his appointment ceases upon the expiry of 3 months after he ceases to be a resident of the electoral division.

Discussion - Returning Officers are the key to a well-administered election. The Returning Officer's tasks require specialized training and competencies. The Returning Officer must have managerial skills to plan and organize, have communication skills, be available on short notice for full-time work, be able to train and work with a large number of employees and be able to work under pressure and time constraints.

The job of the Returning Officer involves much more than the five week election period. Pre-writ work includes intensive training, map reviews and organizing for the election. Postelection tasks include reporting, preparing financial accounts and returning materials. As a result, Returning Officers must be in place at all times to be ready when an election is called.

These appointments are made by the Lieutenant Governor in Council and, generally, a new slate is appointed when the government changes. From the spring of 1985 until the election call in February, 1986, 91 appointments were made for the 57 positions. Many of the 34 who resigned or were rescinded had been through the initial training seminar and realized that they could not do the job. Too often, the qualifications and expectations for the position were not understood by those appointed.

Ten of the appointments were made within the month preceding the election call. As a result, their training was not as thorough as desired. It is important for the administration of an election that qualified Returning Officers be in place at all times. Training and preparation are ongoing and can be costly if personnel are continually changing. Experience gained during an election is invaluable and would add to the smooth operation of the next election if these trained, experienced personnel were again involved.

The administrative advantages of permanent Returning Officer appointments are immeasurable. At the same time, it would avoid the last minute scramble to get Returning Officers in place in the fourth year of a government's mandate.

Other jurisdictions are recognizing the importance of having Returning Officers in place at all times and are acknowledging the increasing complexity of the task. New methods of recruiting and retaining Returning Officers are being explored. In Quebec, Returning Officers are appointed by the Chief Electoral Officer after a public competition is held. The appointment is for a five year term which is renewable. In Saskatchewan, a retainer is paid in non-election years. This encourages the filling of vacancies as they occur. Federally, the appointments are permanent with the reasons for removing anyone from office carefully spelled out. Each year Canada's Chief Electoral Officer must publish the names of Returning Officers in the Gazette and a time limit of 60 days is set for filling vacancies. These measures assure that a Returning Officer is in place at all times so there are no last minute appointments close to an election call.

The recommendation for permanent Returning Officers has been made before. There has been resistance to permanent appointments for two reasons - control of the casting vote in the event of a tie and the political nature of the appointments. The issue of a casting vote is dealt with in the next section.

With respect to the issue of political appointments, it is estimated that after each election approximately one-third of the Returning Officers will need replacement. These vacancies occur because of resignations, incompetency or Returning Officers moving from the electoral division. As a result, the government of the day will always have some appointments to make. It will be easier to appoint Returning Officers as vacancies occur rather than to recruit 57 at one time.

Recommendation - The appointment of Returning Officers to be permanent; to be removed only on the recommendation of the Chief Electoral Officer or upon resignation or upon moving out of the electoral division.

B. CASTING VOTE

S.19 The returning officer for an electoral division shall not vote at an election in the electoral division except where, after a judicial recount of the votes or after an appeal from a judicial recount, there is an equality of votes between 2 or more candidates and he is required under this Act to give a casting vote.

S.139 (2) Where after an appeal from a judicial recount, or after a judicial recount from which no appeal is taken, there is an equality of votes between 2 or more candidates who have more votes than any other candidates in the election, the returning officer shall give a casting vote to determine the election and shall thereupon declare the candidate for whom he casts the vote duly elected.

Discussion - Challenges to the disqualification of voters are being made under The Charter of Rights. This may raise the issue of the Returning Officer's right to vote. Recent changes to the Ontario Election Act, which were made to comply with the Charter, removed the ban on voting by Returning Officers. There is probably not a justifiable reason for withholding the vote from them.

The Returning Officer's vote is currently withheld unless there is a tie vote after a judicial recount and appeal. The Returning Officer's casting vote is assumed to go to the government. By removing the casting vote from the Returning Officer, the perceived need for partisan appointments is reduced. If Returning Officers are enfranchised and vote as any other person does, a new mechanism would be needed to break a tie vote.

Even with the Returning Officer breaking the tie, an election that close would result in a challenge under The Controverted Elections Act. A challenge would be a long, costly procedure which would leave the electorate of the electoral division without a clear decision. A mechanism could be provided which would enable the electorate to choose the winner rather than the Returning Officer or any other designated person.

Recommendation - Section 19 to be deleted to remove the restriction on voting by the Returning Officer.

Section 139 (2) to be changed to provide that when there is a tie vote after a judicial recount and appeal, a mechanism be in place to provide for holding a new election in that electoral divison within a specified period of time.

C. DISQUALIFIED VOTERS

S.31 In addition to persons disqualified from voting at provincial elections under this or any other Act of the Legislature, the following persons are disqualified from voting in an election and their names shall not be placed on a voters' list:

(a) Judges of the Court of Appeal, of the Court of Queen's Bench and of a county court and persons appointed as full-time Provincial Judges under The Provincial Judges Act.
(b) Persons who are patients in mental hospitals or institutions for mental retardates.
(c) Persons who have been declared to be mentally disordered by an order of the Court of Queen's Bench made under The Mental Health Act and whose custody has been committed to a committee under that Act.
(d) Persons who are in gaols, prisons or places of detention serving a sentence imposed as punishment for an offence under the law.

Discussion - The Charter of Rights and Freedoms provides every citizen of Canada with the right to vote. This right may only be withdrawn by laws that are both reasonable and demonstrably justified in a free and democratic society. These long standing prohibitions in section 31 must now be reconsidered in light of the Charter.

It is strongly recommended that consideration be given to these disqualifications at the earliest moment so as to bring them, so far as possible, into harmony with the Charter. It is important that the appropriate changes not be left to the courts as experience has shown that court challenges are often left to the last moment which makes administrative changes rushed and perhaps unfair. Also, it is difficult if not inappropriate for the courts to prescribe the administrative procedures which may be required.

a) Judges

Judges currently have the right to vote in British Columbia, Quebec and New Brunswick. Additionally, the Federal White Paper on Election Law Reform recommends that the franchise be extended to Judges.

It is suggested that the prohibition against voting by Judges is not reasonably justified in a free and democratic society and that any apparent conflict in the case of a judicial recount or an application under The Controverted Elections Act could simply be resolved by the

Chief Justice appointing a Judge to the case who was not eligible to vote in the electoral division in question.

Recommendation - It is recommended that the franchise be extended to Judges.

(b)&(c) Mentally Disabled Persons

Organizations from across Canada have argued that mental disability, like any other disability, does not carry with it a reduction in an individual's constitutional rights. In response to this argument, Ontario has recently removed the prohibition against voting by mentally disabled persons and, by all reports, the system is working well. The Federal White Paper on Election Law Reform has also recommended the removal of the restriction on voting by mentally disabled persons.

It is submitted that mentally disabled voters should be treated in the same manner as all other voters and, if they are capable of voting, they should be permitted to do so.

Recommendation - It is recommended that the franchise be extended to mentally disabled persons.

(d) Inmates

During the last Provincial election, an application to Court was made on behalf of certain inmates of the Stony Mountain Correctional Institute (Badger, Carriere and Lukes v The Attorney General of Manitoba). The Court held that section 31(d) was unconstitutional but refused to order that any procedural steps be taken in order to harvest the prison vote. From this judgment, the Attorney-General appealed. The appeal has not yet been heard.

In the course of his reasons for judgment, Scollin, J. stated that "the legislators who are to be elected must have an opportunity to decide what, if any, limits society should place on [the inmate's right to vote]".

As the law now stands, section 31(d) is of no force or effect. Whether to proceed with the appeal is a decision for the Attorney-General. However, in the event of no appeal or an unsuccessful appeal, serious questions regarding how to provide a mechanism for taking the inmates' votes must be considered.

Justice Scollin's reasons for judgment may be read as holding that section 31(d) is unconstitutional because it is a blanket prohibition covering all prisoners whether they be major felons or minor transgressors. There may therefore be room for enacting a valid law which provides voting rights for certain classes of prisoners (for example in provincial institutions) while restricting the right of other prisoners to vote.

Also, assuming some prisoners can vote, consideration must be given to the method of taking the vote, the electoral division in which the vote is to be counted, the status of extra-provincial prisoners, the preparation of voters' lists and the right to campaign in federal or provincial institutions.

Recommendation - It is recommended that once the judgment in Badger v The Attorney-General becomes final, that the appropriate steps be taken to implement this decision.

D. POSTING THE VOTERS' LISTS

S.36(2) The enumerator shall forthwith, after completing the voters' lists,

(a) post one copy thereof outside and adjoining the main entrance of the polling place, or at some other conspicuous place in the polling divison near the polling place; and

(b) deliver the remaining copies to the returning officer.

Discussion - Most Returning Officers had complaints about posting of the Voters' Lists based on issues of privacy. Many persons, including the elderly and women living alone, object to having their names and addresses posted on a streetlamp or in a corner store. Some persons refuse to be enumerated for this reason. As well, the Voters' Lists are often ripped down or destroyed before voters can check them.

In cities and larger towns, enumerators leave a record of enumeration at each house so that residents know they have been enumerated and where they will vote. In rural areas, Voters' Lists are not prepared by a door-to-door enumeration at present so it is important to have the Voters' Lists available locally. The present system of posting it in each polling subdivision means the location is left to the discretion of the enumerator so the voter often doesn't know where to look for it. By specifying a particular location it would be more convenient for voters.

In both urban and rural areas, Voters' Lists are available at all returning offices. The returning office phone number is well publicized and voters are encouraged to phone if they are uncertain about whether they are on the list.

Concentrating on print and media advertising has proven to be more effective in publicizing the time and place of revision than relying on the posted Voters' List for this information.

Recommendation - Rewrite the section so that the enumerator in urban areas delivers all copies to the Returning Officer and in an electoral division which contains rural polling subdivisions, the enumerator to post one copy in the nearest post office and deliver the other copy to the Returning Officer.

E. NOMINATION PAPER

S.53(1) Any 100 or more persons eligible to vote in an election in an electoral division may nominate a candidate in the election by signing and causing to be filed with the returning officer, at any time after the date of the writ of election and before one o'clock in the afternoon of the day fixed for the close of nominations, a nomination paper in the prescribed form.

Discussion - Prior to 1970 a deposit was required from each candidate when a nomination paper was filed. In 1970, the requirement for a deposit was abolished in order to enhance accessibility to the electoral process. It was replaced by the requirement for 50 signatures (up from 25). That number was raised to 100 in 1980.

The intent of the requirement for 100 signatures on a nomination paper is to show that there is support for the nomination. Although all nominated candidates collected the requisite signatures, some candidates received far fewer than 100 votes during the last two elections. These signatures, then, do not necessarily show any significant support in the community for the candidacy and may reduce accessibility to the electoral process. It is not the purpose of the Act to prevent interested persons from becoming candidates.

The signatures for the nomination paper need to be gathered by candidates and verified by Returning Officers at a very busy time of the election. By reducing or eliminating the need for signatures, the nomination process would be simplified for both the candidates and the Returning Officers. If the collection of signatures is not achieving any specific purpose in the nomination process then the administrative convenience of eliminating them is worth considering.

Recommendation - The requirement for 100 signatures on the nomination paper be deleted; the candidate would be required to file a nomination paper in the prescribed form by the time and date mentioned.

F. ELIGIBILITY TO VOTE AT ADVANCE POLL

S.65(1) For the purpose of polling the votes of voters who have reason to believe that they will be absent from their polling subdivisons on polling day for an election, and of voters who suffer from physical infirmities, the returning officer of an electoral division shall establish for the electoral division an advance poll in a polling place within the electoral division and, with the consent of the Chief Electoral Officer, other advance polls in other polling places in the electoral division.

S.65.1(1) In addition to the advance polls established under section 65, the returning officer shall conduct an advance poll in the office of the returning officer in which voters who have reason to believe that they will be absent from their polling subdivision on polling day for an election and voters who suffer from physical infirmities may vote at the election.

S.83(1)(b) Who expects to be absent from his polling subdivision on polling day for the election or who is physically infirm or incapacitated.

Discussion - Voters at an advance poll sign a declaration as to the reason for attending at an advance poll, i.e. either physically incapacitated or absence on polling day. There are other groups of people who vote at the advance poll.

Poll officials are encouraged to vote at an advance poll so that they do not interrupt the proceedings on polling day in order to vote. Political parties encourage their scrutineers to vote at advance polls so they are available on polling day. As well, some elderly people prefer advance polls because it isn't as crowded at the advance polls.

The provision for voting at advance polls needs to be broadened to include these groups of voters. Several jurisdictions have provisions for other voters to use advance polls. Federally, those for whom it is more convenient by reason of health or religious beliefs can use an advance poll. Saskatchewan allows poll officials to use advance polls and Alberta provides for use of advance polls for election officers, candidates, official agents and scrutineers who will be away from their polling subdivisions on election day.

Recommendation - These sections to be reworded so that any voters who will be unable to vote at their polling subdivisions on polling day will be eligible to vote at an advance poll.

G. PROCEDURE AT JUDICIAL RECOUNT

S.135(1)(b) [the judge shall] subject to his decisions made under clause (a), recount all the ballots counted by the several deputy returning officers.

(c) [the judge shall] open all the sealed envelopes containing any or all of the ballot papers, except the envelopes containing the spoiled and discarded ballots, for the purpose of ascertaining the number of ballots therein.

Discussion - Recounts have shown that about 99% of the ballots are valid without question. Current procedures require a judge to look at every ballot, a time consuming and expensive procedure for a judge.

After the judge examines the rejected ballots and the counted ballots which were objected to, the recounting of all the ballots could be done by a court official or election official appointed by the judge.

If further ballots are disputed during the counting, they would be set aside and recorded, to be looked at by the judge for a decision at the end of the count.

Recommendation - The section to be rewritten so that the judge can appoint court or election officials to do the opening of envelopes and counting. All disputed ballots would be recorded and set aside for the judge to decide on rejecting or counting them.

H. COSTS AT JUDICIAL RECOUNT

S.137 No costs shall be awarded in proceedings on a judicial recount and each party thereto is responsible for and shall bear his own costs, including witness fees in respect of any witness subpoened other than deputy returning officers or poll clerks who are subpoened as witnesses, the witness fees for which shall be paid by the Chief Electoral Officer.

Discussion - Since no costs are awarded, there is no discouragement for less-than-serious applications. Although this possibility is slight, the option for costs to be awarded would discourage all but serious applicants.

Recommendations - This section would apply to all recounts required under Section 128(1). For applications for a recount under Section 131(1), the awarding of costs to be at the discretion of the judge.

I. ABSENTEE VOTING

Discussion - Eligible voters are often "administratively disenfranchised" because there is no apparatus in place to take the vote of otherwise qualified voters. Examples are persons working or studying for short-terms outside the province or in an electoral division other than their usual residence and vacationers outside the province during advance and regular polling times. During the recent provincial election, there were questions raised by voters in all of these groups. Many Manitobans were "administratively disenfranchised" due to winter holidays and short-term work contracts in the north.

A recent judicial decision in British Columbia held that administratively disenfranchising voters is in violation of The Charter of Rights. In Hoogbruin and Raffa v. The Attorney-General of British Columbia, Chief Justice Nemetz stated that although "these appellants have an entitlement to vote, by failing to provide a mechanism to implement that right, the statute has deprived them of the substance of that right and thus infringed their Charter right to vote".

Many jurisdictions have a mechanism for absentee voting. Federally, certain categories of workers and students can use a proxy voting system. Absentee voters have a mechanism to vote in five provinces, the Yukon and the Northwest Territories. Each jurisdiction specifies those groups of voters who can use the absentee or proxy system.

The recent federal White Paper on Election Law Reform has recommended that facilities be established to allow qualified voters overseas to vote. Extending the absentee voting provisions is another effort to allow all qualified voters to cast a ballot and meet the Charter's guarantee of the right to vote. Manitoba needs to consider absentee voting in light of the Charter guarantees and to ensure that all franchised citizens have access to a ballot.

If absentee voting is introduced, it would not replace the mail-in ballot which allows house-bound voters to mark their own ballot or the special

blank ballot which allows hospital patients and remand prisoners to mark their own ballot for a candidate in their home electoral division. The absentee vote should be viewed as a mechanism for eligible voters who will be physically absent from the province or their electoral division on the days of advance and regular polling and who do not qualify for special ballots (eg. in hospitals or remand centres). Residence rules would exclude those who leave the province for more than 6 months from voting in a Manitoba election.

Recommendation - A mechanism for absentee voting be established for eligible voters who cannot use any of the other special provisions or regular or advance polls. A procedure for application to be outlined as well as who may be an absentee voter.

ADMINISTRATIVE CHANGES

A. POSTING THE PROCLAMATION

S.27(4) Upon the issue of the proclamation, the returning officer shall post a copy thereof together with a copy of the descriptions of the areas of the several polling subdivisions in the electoral division and the places at which the several polls shall be held for those polling subdivisions in a place in the office of the returning officer where they can be viewed by voters attending the office and, in the case of an electoral division which contains one or more rural polling subdivisions, in each post office in the electoral division and in at least 1 other conspicuous place in each rural polling subdivision in the electoral division.

Discussion - Since there is no standardized place in each polling subdivision to post the proclamation and descriptions, they are not readily found by voters if needed. They are posted in each post office, a readily-identifiable place, and the returning offices so that they will be available for inspection. The phone number of the returning office is well publicized and voters are encouraged to phone if they have questions. Queries about polling places and dates can be handled by the returning office and voters can be directed to local post offices if necessary.

Recommendations - Delete from the section "and in at least 1 other conspicuous place in each rural polling subdivision in the electoral division".

B. SIZE OF POLLING SUBDIVISION

S.29(2) (c) wherever possible, include in a polling subdivision an area that contains approximately 250 voters; and

(d) wherever possible, avoid including in a polling subdivision an area that contains more than 350 voters.

S.72(1) Where, in a polling subdivision, there are more than 400 names on the voters' list, the returning officer shall provide such additional polling places that, when the list is equally divided between the polling places, not more than 400 names of voters are on the resulting list for each polling place and shall appoint a deputy returning officer and poll clerk for each polling place so provided.

Discussion - In many polling subdivisions an average of 350 - 400 voters are on the Voters' List. On polling day, polling officials handle these numbers without administrative difficulties and without undue crowding at the polls. Subdivisions of 250 voters are adding unnecessarily to administrative costs. In order to reduce costs and increase the efficiency of election administration, each of these numbers can be increased.

Recommendation - The number of voters in these sections to be increased by 50 in each case.

C. RURAL ENUMERATION

S.30(5) The enumerator in a rural polling subdivision shall obtain the information to complete the voters' list from municipal or other voters' lists or from any available source and, if it is necessary in any part of a subdivison, by a house to house canvas.

Discussion - The current system of gathering names from municipal lists or other Voters' Lists had its origins in a time when mobility in the rural areas was a problem. By using dated Voters' Lists, rural enumerators cannot be sure of the accuracy of their lists. In most cases today, a house to house enumeration is feasible and would make the voters more aware of the election and of their polling places.

There is a need for more similarity between the urban and rural systems of enumeration both for accuracy and for a better informed electorate. It is from the enumerator that most voters learn about special voting provisions and locations of advance and regular polls. In all but remote areas there is no longer a reason for two systems of enumeration. Although there would be an increasd cost for mileage for rural enumerators, it would be offset by a more accurate Voters' List and a better informed electorate.

Recommendation - In rural electoral divisions, with the exception of certain remote areas designated by the Chief Electoral Officer, house to house enumeration be done with the same procedures and forms as for urban enumeration.

D. ACCESS TO VOTERS' LISTS

S.37(1) The returning officer shall place one copy of each of the voters' lists completed by the enumerators in the electoral division on file in his office and shall allow public access thereto for the purpose of inspecting or making copies thereof at any reasonable time on any day, except a holiday, until the day before polling day.

Discussion - The Elections Act provides for an enumeration and preparation of Voters' Lists at each election. The information for the Voters' Lists is collected for use at the election and voters are expected to give the information for this use. There is an element of trust by the voter in expecting that the information will be used only for the election.

The Act permits anyone to copy the Voters' Lists in the returning office. It needs reviewing in light of privacy concerns. The Returning Officers have salespeople and direct mail firms coming to their offices to copy the Voters' Lists for business purposes. This was not the intent of the Act.

Since the Act adequately provides for candidates to have copies of the Voters' List [S.37(5)], it is not necessary to have the copying provision for others. Anyone can inspect the lists but the right to copy needs to be removed.

As a further measure of controlling the access to Voters' Lists, they should be added to the definition of "election papers" in the definition section of the Act [S.1(g)]. By adding Voters' Lists to this definition, they would be treated the same as other election papers with respect to access and disposal after the election.

Recommendation - Delete "or making copies thereof" from S.37(1). [Section 163 would need changes to reflect this deletion].

Include Voters' Lists in the definition of election papers or election documents in S.1(g).

E. REPRODUCING VOTERS' LISTS

S.37(2) The returning officer shall forward one copy of each of the voters' lists completed by the enumerators in the electoral division to a printer to be printed and shall send one copy to each of the candidates for whom a nomination paper has been filed in the election.

S.37(4) The printer shall, within 5 days of receiving the voters' lists from the returning officer, deliver to the returning officer, the number of printed copies prescribed by the Chief Electoral Officer printed on white paper.

Discussion - The Act reflects the procedures used when the only avenue for reproducing the Voters' List was a printer. Since more and more of this kind of duplication is being done in the office of the Returning Officer with photocopying equipment, the wording of this section needs to reflect these changes in practice. Significant time is saved and savings are realized by having these lists photocopied in the returning office.

Recommendation - Section 37(2) to be reworded so that Returning Officer retains one copy of each of the Voters' Lists to be used for reproducing or printing.

Section 37(4) to be reworded so that the Returning Officer causes to have the Voters' List reproduced or printed at least one clear day before Revision begins.

F. HOURS OF REVISION

S.38(1) Where a poll is necessary for an election in an electoral division, each revising officer for the electoral division shall sit for the revision of the voters' lists of the electoral division between 10:00 o'clock in the morning and 10:00 o'clock in the evening on the 3rd and 4th days after the day appointed for the close of nominations of candidates at the election at places fixed by the returning officer of the electoral division.

Discussion - Many Returning Officers reported that the places of revision were not utilized after 8 p.m. Regular advance polls and regular polls are open from 8 a.m. to 8 p.m. so these are hours with which voters are familiar. By standardizing the revision hours, it will be easier for voters to remember. As well, there is concern for the safety of revising officers who often work alone in the evening hours.

Recommendation - Change the hours of revision so that it is open between "8:00 o'clock in the morning and 8:00 o'clock in the evening."

G. ENDORSEMENT OF CANDIDATES

S.53(3) Prior to or upon the close of nominations in the election, every registered political party shall file with the Chief Electoral Officer an endorsement list which names

(a) the candidates endorsed by the registered political party in the election; and

(b) the electoral divisions in which those candidates have been nominated.

Discussion - The current procedure for a registered political party to endorse candidates is awkward. The registered political party cannot file the endorsement list until after the last candidate is nominated which is often close to Nomination Day. Since each candidate of a registered political party is required, under The Elections Finances Act, Section 10(3), to file a notice of nomination signed by the party chief financial officer, it would simplify the procedures if the endorsement by the party were a part of this notice.

By endorsing candidates as they are nominated, the last minute pressures are off for the registered political parties and for the Returning Officers who have to be notified as soon as possible so that ballots can be printed properly.

The procedures of endorsement for a party applying for registration would remain as outlined in section 53(3.1).

Recommendation - The procedure for endorsing candidates by a registered political party to be changed so that it is filed as a part of the notice of nomination required under The Elections Finances Act, section 10(3). It would still be required that all endorsements be filed prior to or upon the close of nominations in the election.

H. ADVANCE POLLS AND ADVANCE VOTING IN RETURNING OFFICE

S.65(3) An advance poll shall be open in the electoral division on 5 days fixed by the Chief Electoral Officer, one of which shall be the Saturday immediately following the day fixed for the close of nominations.

S.65.1(3) The advance poll conducted under this section shall be open at 12:00 o'clock midday and shall remain open until 6:00 o'clock in the evening of each day in the period commencing on and including the Monday the 15th day before polling day at the election and ending on and including the Saturday, the 3rd day before polling day at the election, except Sundays and days on which an advance poll established under section 65 is open for voting.

Discussion - The purpose of advance polls is to accommodate those voters who will not be in their home ridings on polling day or who are unable to vote at the regular poll. If an absentee vote system is introduced, this will alleviate the need for the very early advance polls as they accommodate voters who are travelling outside the province.

There are currently 13 days of advance voting in Manitoba elections - five advance polls and eight days of advance voting in the returning office. These outnumber the days of advance voting in the other provinces. Ontario (12) and British Columbia (11) are also high but most provinces range from two (Quebec, most Maritime provinces) to six (Saskatchewan) days of advance voting.

Consideration needs to be given to reducing the number of days of advance voting and to the time during the election period when they are held. Many Returning Officers reported that the large number of advance polling days in their offices was unnecessary and the turnout did not warrant the extra costs involved. By shortening the period of advance polling in the returning office, there will still be adequate access.

There are many procedural problems with having the first advance poll so early. It is on the same day as revision which causes confusion for voters since revision and the advance poll are often in different locations. It also causes communication problems for Returning Officers, especially in rural areas, because advance poll officials need to know the names of voters added at revision.

As well, it is extremely difficult to have ballots printed in time for the first advance poll. Because of the rush, again especially in rural areas, there are problems in getting proofs checked and this can lead to errors in printing. By moving the first day of advance polling, access will not be diminished. It will allow time for the revised Voters' Lists to be prepared and for the ballots to be printed without undue pressures.

There are similar procedural problems with having the advance voting in the returning office extend to the 3rd day before polling day. After the advance voting is finished, the Returning Officer has to mark the advance voters on the Voters' Lists and distribute the lists to all Deputy Returning Officers before polling day. Given the timing of the last day of advance voting, it is particularly difficult in rural and northern electoral divisions to get these lists to the poll officials.

These administrative problems would be resolved by shortening the period during which advance voting takes place. With all the special provisions of the Act and the remaining advance voting days, access is still assured to all voters.

Recommendation - The number of days for advance voting be reduced. The first advance poll be the Monday immediately following the day fixed for the close of nomination. The final day for advance voting be the Wednesday, the 6th day before polling day.

I. ORDER OF NAMES ON BALLOT

S.73(7) [names on ballot].

Discussion - The order of the names on the ballot is currently specified in Regulation 81/72. It would be useful to add this requirement to the Act as a part of section 73(7).

Recommendation - Add a part (d) to section 73(7) as follows:

The names of the candidates printed on the ballot papers shall be printed in alphabetical order of their surnames.

J. **INCAPACITATED VOTER**

S.100(3)(b) the reason why the voter was assisted or his ballot paper was marked by the friend or the deputy returning officer; and

Discussion - An amendment to section 100(1) removed the requirement for incapacitated voters to take an oath as to their disability. This section needs to be amended to remove the need to record the reason for needing assistance. The reasons for a person to have assistance are outlined in section 100(1) and do not need to be recorded in the poll book.

Recommendation - Delete section 100(3)(b) and renumber 100(3)(c) to reflect this deletion.

K. MAIL-IN VOTER ON VOTERS' LIST

S.101(2) Where the returning officer receives an application under subsection (1) at least 10 days before polling day for the election and he is satisfied that the voter who has applied is entitled to vote at the election and is incapacitated for some physical cause, he shall initial a ballot paper for the purposes of identification and, not later than 7 days before polling day for the election, deliver or cause to be delivered to the voter, or send to the voter by ordinary mail to arrive by ordinary mail at the residence of the voter not later than 5 days before polling day for the election,

(a) the ballot paper so initialled;
(b) a ballot envelope with a certificate of identification printed thereon in the prescribed form;
(c) a certificate envelope with a certificate of identification printed thereon in the prescribed form;
(d) an outer envelope with the address of the returning officer printed thereon; and
(e) instructions as to how to vote by mail as described in subsection (5);

and shall cross the name of the voter from the voters' list for the polling subdivision at which the voter was entitled to vote and enter on the voters' list opposite the name of the voter the words "Mailed ballot".

Discussion - House-bound voters have access to mail-in ballots because of their lack of mobility. Sometimes, this very lack of mobility prevents the voter from being enumerated as well. Answering the door during enumeration or attending revision are as impossible as going to the poll to vote. However, the voter's name must be on the Voters' List in order to use a mail-in ballot.

As a result, some eligible house-bound voters are administratively disenfranchised. Consideration needs to be given to whether a mechanism can be instituted to allow these names to be placed on the Voters' List. There is no facility at present for the house-bound voter to swear on at the poll as the voter does not attend at a poll.

There is a need for safeguards with the mail-in ballots because there is a concern about abuse. The Returning Officer could be empowered to add these names to the Voters' List. This would enable the Returning Officer to check the validity of names to prevent abuse.

Recommendation - A mechanism be established to add the names of house-bound voters to the Voters' List if they are missed during enumeration and revision.

L. POLITICAL ACTIVITIES ON POLLING DAY

S.112(1) Subject to subsection (2), no person shall, on polling day at an election in an electoral division, furnish to another for the purpose of being carried within the electoral division, or carry within the electoral division, anything to distinguish the bearer, whether with or without followers, as the partisan of a candidate in the election or of a political party endorsing a candidate in the election.

Discussion - The purpose of this section is to prevent partisan political activity on polling day. Section 111 prohibits political activity within 50 metres of a polling place and the above section is aimed at other activities. Many political workers sought guidance on this section during the election. The intent of Section 112(1) is not clear.

Apart from banning political activity at or near a polling place, most jurisdictions do not have any other prohibitions. Those that do (Canada, New Brunswick, Newfoundland, Saskatchewan) have specific prohibitions against "political propaganda" on polling day. A public address system or loudspeaker on an automobile may not be used to promote a candidate. As well, parades or demonstrations for a candidate are not allowed. Also ruled out are banners, flags, sets of colours, etc. which are worn or used on polling day as political propaganda.

The section in Manitoba's Act, S.112(1), needs to be reviewed to see if it is necessary or to clarify its meaning and scope. Some of the queries during the election were to see if it included a ban on pamphlets, buttons, etc. As it is now written, interpretation is very difficult.

Recommendation - Review the section to either delete it or clarify its intent.

M. STATEMENT OF THE POLL

S.119(2) The deputy returning officer shall make out a statement of the poll in triplicate in a prescribed form and the statement shall forthwith be signed by him and the poll clerk and such of the candidates or scrutineers as may be present and desire to sign it.

S.119(3) One copy of the statement shall be attached to the poll book, another shall be retained by the deputy returning officer, and a 3rd shall be enclosed by him in a separate envelope supplied for the purpose and handed to the returning officer or placed in the ballot box.

Discussion - There is no purpose in having the Deputy Returning Officer retain a copy of the statement of the poll. The requirement causes considerable confusion because the Deputy Returning Officer does not know what to do with it after election night. It is sufficient to have a copy in the poll book and a copy for the Returning Officer.

Recommendation - In section 119(2), replace the word "triplicate" with the word "duplicate".

In section 119(3), delete "another shall be retained by the deputy returning officer and a 3rd" and replace it with "and the other copy".

N. STATEMENTS OF ACCOUNTS

S.122 Before leaving the polling place, the deputy returning officer shall see that statements of account for all fees and expenses of poll officials and rent are properly filled out and certified and delivered or mailed to the returning officer.

Discussion - These duties are not the responsibility of the Deputy Returning Officer and are no longer done at the polling place. The statements of account and rents are the administrative duty of the Returning Officer and are done in the returning office.

Recommendation - Delete section 122.

TECHNICAL ITEMS

S.1(1) "official agent" means a person appointed by a candidate to represent the candidate during a campaign period;

Discussion - Under The Elections Finances Act (S.1), the official agent acts as the Chief Financial Officer of the candidate. To avoid confusion in the appointment and role of the official agent, it would be useful to include the role of Chief Financial Officer in the definition section of The Elections Act.

Recommendation - Add to the definition of official agent, "and to act as Chief Financial Officer for the candidate pursuant to Section 1 of The Elections Finances Act.

S.49(4), 49(11), 129(1), 131(1), 138(5)

Discussion - There are several references to the county court in these sections which need to be amended to reflect changes in the structure of the court.

Recommendation - All references to "county court" be changed to "Court of Queen's Bench".

S.55(2) As soon after the close of nominations as he can verify the nominations, the returning officer shall announce in an audible voice at his office the names of the persons whose nominations as candidates he has received and 24 hours following the close of nominations he shall announce the names of the candidates whose nominations have been verified and who have not withdrawn.

Discussion - An amendment to Section 56(1) permits a candidate to withdraw any time prior to polling day. Section 55(2) is not consistent with the previous amendment to Section 56(1).

Recommendation - Delete "and 24 hours following the close of nominations he shall announce the names of the candidates whose nominations have been verified and who have not withdrawn."

S.58(1) Where after the close of nominations more than one candidate remains nominated in an election the returning officer shall

(d) with the least possible delay, cause a copy of the notice sent to the Chief Electoral Officer, to be published in the same manner as the proclamation of the election was published; and

S.58(2) A returning officer may make or cause to be made upon the election notice posted under subsection (1), corrections of obvious errors and omissions at any time up to 48 hours before the time fixed by the proclamation for the opening of polls on polling day and he shall forthwith after the corrections are made notify the Chief Electoral Officer and each candidate or his official agent of the corrections made.

Discussion - The grant of poll is no longer published as a separate notice to be posted. It is published in newspapers only which is covered in S.58(1)(e).

Recommendation - Delete S.58(1)(d). In S.58(2) delete reference to correcting the notice posted under subsection (1).

S.73(7) (c) where the names of 2 or more candidates on the ballot paper are the same or so similar that, in the opinion of the deputy returning officer, confusion may arise as to the identity of the candidate, in the same space as the name of each candidate, the occupation of the candidate as reported to the deputy returning officer by the candidate on request of the deputy returning officer.

Discussion - The printing of the ballots is the responsibility of the Returning Officer.

Recommendation - Three references in this section to "deputy returning officer" to be changed to "returning officer."

S.74(4) Each ballot box delivered to a deputy returning officer shall contain election materials of the nature, number and quantity required for the purposes of the election as determined by the Chief Electoral Officer.

Discussion - An amendment to Section 74(2) gives options for the construction of ballot boxes. The ballot box in current use is delivered to the deputy returning officer unassembled. Section 74(4) needs rewording to reflect this change.

Recommendation - Reword the section to have election materials delivered to the deputy returning officer with the ballot box.

S.90(5) Not more than 2 scrutineers for any candidate shall vote as such on the authority of a certificate issued under this section in any single poll.

Discussion - An amendment to Section 90(1) removed the right of scrutineers to use a certificate to vote at another poll on polling day. Section 90(5) was made obsolete by that amendment.

Recommendation - Delete this section from the Act.

S.121(2) After locking and sealing the ballot box, the deputy returning officer shall enclose the key to the ballot box in an envelope supplied for the purpose and, as soon as possible thereafter, personally deliver the ballot box and the key separately to the returning officer or his agent appointed to call for it or, if the returning officer's office is a distance away and a post office or express office is nearer at hand, he shall send the key to the returning officer by registered mail and the ballot box to the returning officer by express or by registered mail.

S.121(3) Where the deputy returning officer is unable to attend to the return of a ballot box and the key owing to illness or other cause he shall deliver them to the poll clerk or, if the poll clerk is unable to act, to a reliable messenger and shall write on the envelope containing the key and on the ballot box or on a ticket attached thereto, the name of the person to whom the key and the ballot box have been delivered and shall take a receipt therefor in the prescribed form and the poll clerk or person so chosen shall, without delay, deliver or mail the ballot box and the key separately to the returning officer as provide in subsection (2).

Discussion - An amendment to Section 74(2) makes it optional for a ballot box to be sealed with a lock and key. Ballot boxes in current use have seals rather than locks with keys.

Recommendation - Rewrite these two sections removing all references to keys.

THE CONTROVERTED ELECTIONS ACT

The Controverted Elections Act

This Act provides the Court with the power to invalidate an election in circumstances where election offences or irregularities were such as to render the outcome doubtful. It is, thankfully, a seldom utilized piece of legislation.

The statute was borrowed, almost intact, from the Imperial Statutes of 1877 and is in serious need of a complete rewriting. The language used and the procedures required are archaic and extremely difficult to understand or implement.

Recommendation - The Controverted Elections Act be repealed and a new Act passed in its place. Consideration should be given to incorporating the principles of the legislation into the body of The Elections Act for ease of reference.